

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH**

HENRY JAMES HOLMES,)
)
Plaintiff,) Civil Action No. 2: 22-cv-00047
) Chief Judge Mark R. Hornak
v.) Chief Magistrate Judge Cynthia Reed Eddy
)
WARDEN ORLANDO HARPER and)
PITTSBURGH POLICER OFFICER)
MICHAEL VEITH,)
Defendants.)

MEMORANDUM OPINION

The above-captioned Complaint for Violation of Civil Rights was received by the Clerk of this Court on January 7, 2022, after having been transferred to this Court from the United States District Court for the Northern District of California. The Complaint was lodged pending disposition of a Motion for Leave to Proceed in forma pauperis (the “IFP motion”). ECF No. 2. The IFP motion was granted on January 13, 2022, ECF No. 6, and the Complaint filed that day. ECF No. 7.

The case was originally referred to Magistrate Judge Lisa P. Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72 of the Local Rules for Magistrate Judges, who ordered the United States Marshal to mail a copy of the Complaint, notice of lawsuit and request for waiver of service of summons, and waiver to Defendants Warden Orlando Harper and Pittsburgh Police Officer Michael Veith. ECF No. 8. On March 24, 2022, the Clerk of Court determined that this case was related to two previous filed civil actions at 17-cv-1278 and 19-cv-1398 in this Court and reassigned the case to

Magistrate Judge Maureen P. Kelly pursuant to Local Civil Rule 40(3). On March 24, 2022, Magistrate Judge Kelly recused, ECF No. 20, and the matter was reassigned to Chief Magistrate Judge Cynthia Reed Eddy.

Defendants have each filed a Motion to Dismiss seeking to have all claims against them dismissed. On August 30, 2022, Chief Magistrate Judge Eddy filed a Report and Recommendation (“Report”), ECF No. 37, recommending that Defendant Veith’s motion to dismiss be granted in its entirety. In a companion Report and Recommendation, ECF No. 38, Chief Magistrate Judge Eddy recommended that Defendant Harper’s motion to dismiss likewise be granted in its entirety.

This Memorandum Opinion addresses both Reports.

Motion to Dismiss Filed by Defendant Veith (ECF No. 17)

Defendant Veith filed a motion to dismiss on March 23, 2022, seeking to have all claims against him dismissed. Plaintiff was given until May 2, 2022, to respond to the motion. ECF No. 23. On May 10, 2022, the Clerk’s Office received a nine-page document without a title from Plaintiff. ECF No. 32. The Clerk’s Office filed the document as correspondence re: MTD (“Correspondence”). Notwithstanding that it is not entirely clear that the Correspondence was intended to respond to the motion to dismiss, Chief Magistrate Judge Eddy considered the Correspondence in issuing the Report on the motion to dismiss filed by Defendant Veith.

The Report, ECF No. 37, filed on August 30, 2022, recommends that Defendant Veith’s motion to dismiss be granted in its entirety on a number of grounds: the Complaint is repetitious of Plaintiff’s two previously filed civil actions at 17-cv-1278 and 19-cv-1398 in this Court, the claims are barred by res judicata, testimonial immunity, and the applicable statute of limitations,

and the Complaint fails to state a claim upon which relief can be granted based on *Heck v. Humphrey*, 512 U.S. 447 (1994). Service of the Report was made on Plaintiff at his address of record. The Report explained that Plaintiff's objections to the Report must be filed by September 16, 2022, and that failure to file timely objections would waive the right to appeal. To date, Plaintiff has not filed any objections to the Report and there has been no activity on the docket since the Report was filed.

After de novo review of the pleadings and the documents in the case, together with the Report and Recommendation, the Court finds that the Report's conclusions that Defendant Veith's motion to dismiss should be granted in its entirety is correct and adopts the same.¹ Accordingly, the Report will be adopted as the Opinion of the Court in all respects.

Motion to Dismiss Filed by Defendant Harper

Defendant Harper filed a motion to dismiss on May 5, 2022, seeking to have all claims against him dismissed. ECF No. 29. Plaintiff filed a response in opposition on May 17, 2022, ECF No. 33, to which Defendant Harper filed a Reply, on June 21, 2022. ECF No. 34.

Chief Magistrate Judge Eddy issued a Report, ECF No. 38, on August 30, 2022, recommending that Defendant Harper's motion to dismiss be granted in its entirety on a number of grounds: the Complaint is repetitious of Plaintiff's two previously filed civil actions at 17-cv-1278 and 19-cv-1398 in this Court, the claims are barred by res judicata and the applicable statute of limitations, any official capacity claims fail to state a claim under *Monell v. Department of Soc. Services of City of New York*, 436 U.S. 658 (1978), and its failure to state a

¹ If a party does not file timely objections to a magistrate judge's report and recommendation, the party may lose its right to de novo review by the district court, although the court must still give "reasoned consideration" to the magistrate judge's report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987).

claim upon which relief can be granted for false arrest or false imprisonment based on *Heck v. Humphrey*, 512 U.S. 447 (1994). Service of the Report was made on Plaintiff at his address of record. The Report explained that Plaintiff's objections to the Report must be filed by September 16, 2022, and that failure to file timely objections would waive the right to appeal. To date, Plaintiff has not filed any objections to the Report and there has been no activity on the docket since the Report was filed.

After de novo review of the pleadings and the documents in the case, together with the Report and Recommendation, the Court finds that the Report's conclusions that Defendant Harper's motion to dismiss should be granted in its entirety is correct and adopts the same. Accordingly, the Report will be adopted as the Opinion of the Court in all respects.

An appropriate Order follows.

Dated: September 29, 2022

s/ Mark R. Hornak
MARK R. HORNAK
CHIEF UNITED STATES DISTRICT JUDGE

cc: The Honorable Cynthia Reed Eddy
Chief United States Magistrate Judge

Henry James Holmes
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